Supreme Court, U. S.
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MICHAEL ROBAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1866

WILLIAM C. KORBAR,

Petitioner,

vs.

THOMAS HITE, ALUMINUM WORKERS NEWS, and LOCAL UNION 3911 UNITED STEEL WORKERS OF AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT, FOURTH DIVISION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No.

WILLIAM C. KORBAR,

Petitioner,

VS.

THOMAS HITE, ALUMINUM WORKERS NEWS, and LOCAL UNION 3911 UNITED STEEL WORKERS OF AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT, FOURTH DIVISION

Petitioner, William C. Korbar, respectfully prays that a Writ of Certiorari issue to review the judgment entered by the Appellate Court, First Judicial District, Fourth Division, on October 27, 1976, Cause No. 62339, sustaining the Circuit Court of Cook County, Chicago, Illinois, judgment dismissing the petitioner's amended complaint for libel; a petition for leave to appeal was denied petitioner by the Supreme Court of Illinois on March 31, 1977.

OPINIONS BELOW

On May 21, 1975, the Circuit Court of Cook County, Chicago, Illinois, entered a judgment against the petitioner and for the respondents granting the respondents' motion to dismiss the petitioner's amended complaint for libel.

On October 27, 1976, the Illinois Appellate Court, First District, Fourth Division, sustained the judgment of the Circuit Court of Cook County, Chicago, Illinois, which opinion is reprinted in the appendix at A-1 - A-8.

On March 31, 1977, by order of the Supreme Court of the State of Illinois, petitioner's leave to appeal to the State Supreme Court was denied; the order is reprinted in the appendix at page A-9.

JURISDICTION

The judgment of the Appellate Court, First District, Fourth Division, was entered on October 27, 1976, affirming the respondents' motion to dismiss the plaintiff's amended complaint for libel. Leave to appeal to the Supreme Court of the State of Illinois was denied on March 31, 1977.

The jurisdiction of this court is invoked under the First Amendment of the United States Constitution.

The federal question was raised by the memoranda of the plaintiff and defendant which were filed in conjunction with the respondents' motion to dismiss the complaint and amended complaint of the petitioner.

The petition for writ of certiorari has been filed within 90 days from the denial of the petition for leave to appeal to the Supreme Court of the State of Illinois on March 31, 1977.

QUESTIONS PRESENTED

1. Did libel per se exist under the innocent construction rule application?

2. Is the petitioner a public official subject to the defense of free comment?

3. Assuming that the petitioner is a public official or public figure, does the publisher have any responsibility in terms of the defense of free comment?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

Prior to the publication of the libelous article by the respondents in their local union newspaper described as "Aluminum Workers News", the petitioner was the duly elected President of Reynolds-McCook Employees Credit Union of Brookfield, Illinois.

On, or about, September 13, 1974, one of the respondents, Thomas Hite, addressed two letters to the petitioner relating to the issue of whether the petitioner had denied members of the Reynolds-McCook Employees Credit Union the right to withdraw their proxies.

Responding to the aforementioned letters, the petitioner denied that he, or any other member of the Reynolds-McCook Employees Credit Union, had denied a member's request to withdraw a permanent proxy upon request.

Subsequently in January of 1975, the respondents published the following entitled article: "IS YOUR CREDIT UNION ABOVE BOARD?"

In that newspaper article the petitioner was described as not caring about steel workers' problems, that he would do as he pleases, that he should not withhold proxies denying the exercise of the democratic right to vote.

That the stated publication did not truthfully and accurately reflect the views of the petitioner's letter addressed to the respondents dated October 2, 1974, in which letter the petitioner emphatically denied any attempt by him or by the Reynolds-McCook Employees Credit Union to deny any member his right to withdraw a proxy. Appendix *infra* A-10.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION BELOW VIOLATES THE FREEDOM OF SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION IN THAT THE PUBLICATION IS NOT PROTECTED BY THE FIRST AMENDMENT.

On pages 4 and 5 of its opinion, the Appellate Court analyzes the first two paragraphs of the publication as a lack of communication between the union members and the petitioner and a lack of awareness by the petitioner of certain grievances which were common among the membership. Appendix *infra* A-5.

Further, in its analysis, the Appellate Court states that the headline and the latter part of the publication pertaining to the withholding of proxies is merely criticism of credit union policy rather than impugnment of plaintiff's business or professional reputation.

However, when the article is examined carefully in conjunction with the headline, the headline in itself lays the foundation for the article in its totality to be construed as libel per se when it asks, "Is Your Credit Union Above Board?" *Valentine v. North American Company*, 60 Ill. 2d 168 (1974 and *Dilling v. Illinois Publishing and Printing*, 340 Ill. App. 303 (1950).

"Is Your Credit Union Above Board?" does not suggest a mere lack of communication between union members and the petitioner, as president, nor a lack of awareness by the petitioner of certain grievances common among the membership nor does it suggest merely a criticism of credit union policy, but it imputes a want of capacity in the petitioner, as president, to handle credit union matters with efficiency and honesty.

At the same time, the content of the article does not minimize the full impact of the aforesaid headline imputing a want of capacity as to the petitioner relating to his efficiency and honesty when it describes him as being insensitive to problems of steel workers, that the credit union, of which he is president, does not respect the dignity of Spanish speaking members and withholds voting proxies to prevent the exercise of the democratic right to vote by the credit union membership. *Zeinfeld v. Hayes Freight Lines, Inc.*, 41 Ill. App. 2d 345 (1968), *Lorilard v. Field Enterprises*, 65 Ill. App. 2d 65 (1965), *Jacobs v. Gasoline Retailers Association*, 28 Ill. App. 3d 7 (1975), *Valentine v. North American Company*, 60 Ill. 2d 168 (1974), *Dilling v. Illinois Publishing and Printing*, 340 Ill. App. 303 (1950) and *McQuire v. Jankiewicz*, 8 Ill. App. 3d 319 (1973).

II.

THE DECISION BELOW VIOLATES THE FREEDOM OF SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION IN THAT THE PETITIONER IS NOT A PUBLIC OFFICIAL OR PUBLIC FIGURE SUBJECT TO THE DEFENSE OF FREE COMMENT.

In its opinion, on pages 7 and 8, the Appellate Court does not classify the petitioner as a public official.

It further does not categorize the petitioner as a public figure for all purposes; it describes the petitioner as a private individual who has "thrust himself into the forefront of the action by virtue of being elected president of the credit union" thereby preventing the insulation of himself from free comment.

Analyzing the language of the petitioner thrusting himself into the forefront of the action by virtue of being elected president of the credit union, the Appellate Court states as follows:

> "(i)t is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation."

The above language is cited from *Gertz v. Robert Welch, Inc.* 418 U.S. 323 (1974).

In the *Gertz* matter the Supreme Court of the United States held that *Gertz*, as an attorney, was considered a private citizen, not a public official and that it was not significant that the publication as to him involved a matter of public interest with the result that the defendant could not rely on the defense of free comment.

In a recent Illinois Supreme Court decision of *Troman v. Wood*, 62 Ill. 2d 184 (1975) the Court states as follows:

> "We hold, therefore, that in a suit brought by a private individual to recover actual damages for a defamatory publication whose substantial danger to reputation is apparent, recovery may be had upon proof that the publication was false, and that the defendant either knew it to be false, or believing it to be true, lacked reasonable grounds for that belief. We hold further that negligence may form the basis of liability regardless of whether or not the publication in question related to a matter of public or general interest."

Applying the *Gertz* and *Troman* cases to the petitioner, the petitioner is no different in his status as president of a local credit union than was *Gertz* as legal counsel involved in personal litigation against Robert Welch, Inc.

As a consequence, the petitioner has the status of a private citizen and that, as a private citizen, he can insulate himself against free comment under the *Troman* decision.

In *Troman* the Court stresses that, as to private citizens, the publisher has a duty to investigate to determine the accuracy of its publication.

In this instance, prior to publication, the respondents had inquired of the petitioner as to his position on withdrawing their proxies and in a written response to that inquiry on October 2, 1974, the petitioner stated in no uncertain terms that no member had ever been refused his proxy which fact was not stated in the publication.

At the same time the respondents stated the petitioner had no concern for the problems of the steel workers when, in fact, he did not require their assistance in the management of his credit union affairs, but not that he had no concern for their problems.

The allegation that Spanish speaking members were not treated with dignity in that private office conferences had not been arranged for them to discuss personal matters was not indicative of a thorough investigation proving a lack of respect by the petitioner for the Spanish speaking members of the credit union.

Based upon the disregard of their investigation as to the issues of withdrawing proxies and lack of concern for the problems of the steel workers and the ineffective investigation as to the issue relating to Spanish speaking members of the credit union, the respondents violated the *Troman* rule.

III.

THE DECISION BELOW VIOLATES THE FREEDOM OF SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION IN THAT, ASSUMING THE PETITIONER IS A PUBLIC OFFICIAL OR PUBLIC FIGURE, THE PUBLISHER DOES HAVE A RESPONSIBILITY TO PRINT THE TRUTH AS IT RELATES TO THE DEFENSE OF FREE COMMENT.

When a publisher knowingly prints a statement that is false or is a reckless disregard as to whether a statement was false or not, then actual malice has been established and the qualified privilege of fair comment as a defense does not exist. *New York Times v. Sullivan*, 376 U.S. at page 279, and *Grabavoy v. Wilson*, 87 Ill. App. 2d 193 (1967).

In this instance, the petitioner in his correspondence to the respondents clearly asserted a position that was contrary as described in the published article by the respondents.

In effect, the publication fabricated the petitioner's written position on the issue of withdrawing of proxies and deliberately distorted the petitioner's views relating to steel workers' problems.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of the State of Illinois.

Respectfully submitted,

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APPENDIX A

No. 62339

WILLIAM C. KORBAR,

Plaintiff-Appellant,

v.

THOMAS HITE, ALUMINUM WORKERS NEWS, and LOCAL UNION 3911 UNITED STEELWORKERS OF AMERICA,

Defendants-Appellees.

Appeal from Circuit Court, Cook County.
Honorable **Mel R. Jiganti**, presiding.

Mr. PRESIDING JUSTICE JOHNSON delivered the opinion of the court:

Plaintiff, William C. Korbar, brought this action to recover damages from Thomas Hite, "Aluminum Workers News," and Local Union 3911 of the United Steelworkers of America, AFL-CIO, for alleged defamatory statements contained in an article in the "Aluminum Workers News." The trial judge granted defendants' motion to dismiss, and plaintiff has appealed.

The amended complaint in this cause of action alleged that plaintiff had been elected president of the Reynolds-McCook Employees Credit Union in Brookfield, Illinois. On September 13, 1974, defendant Thomas Hite, president of Local 3911 of the United Steelworkers of America, wrote two letters to plaintiff; the first requested a meeting to discuss matters of alleged

differences between certain members of Local 3911 who belonged to the credit union, and the second requested that plaintiff cease and desist from the practice of denying members of the credit union the right to withdraw their proxies. Plaintiff responded by letter dated October 2, 1974 that no member had ever been refused his permanent proxy upon request; that he did not need help from any member of the local unions; and that he felt it was his prerogative to disregard the invitation to meet with Hite.

In January 1975, an article titled "Is Your Credit Union Above Board?" by Thomas Hite, appeared in the "Aluminum Workers News." The article, in its entirety, read as follows:

> "The question, is your credit union serving you or is it headed by a president that is insensitive to your needs or desires? I think that these are some of the questions that you should be interested in getting an answer to before you think about putting the same Board of Directors back in at the next Annual Meeting. From what has been told to me, your credit union seems to be run by a president and a majority of the Board of Directors that think that they own it and anytime you seek service from them, they will be doing you a favor.
>
> After receiving a mandate from you to discuss some of your grievances with Mr. Kobar [*sic*] in an effort to resolve them, I got in touch with Mr. Kobar and requested a meeting with him. In essence Mr. Kobar said that he could care less about the steelworkers problems and that he would do as he pleases. Perhaps, if Mr. Kobar had tried, I am sure that many of the grievances or misunderstandings could have been resolved or explained and all would have been satisfied. I am well aware that the Board of Directors makes policy governing the operation of the credit union, but common

> decency dictates that every man or woman be afforded proper dignity and respect due any human being.
>
> I do think that the Spanish Speaking members should be treated with dignity. I do think the manager should not stand in the back of the office and transact business with a member where everyone can hear.
>
> I do think that if you cannot help a member, that he or she should be called into an office and told why and that member should be counciled [*sic*] as to what would be the best alternative to the problem.
>
> I do think that the credit union should give back your proxy if you want it and allow you the chance to exercise your democratic right to vote for the people of your choice.
>
> I do hope that as a part of plant management, that Mr. Kobar does not reflect the sentiment of the company. I have never wanted to become anything in the credit union but a member and I have never experienced any of the indignities that I've been told other members experienced, but when one member of the steelworkers is treated unfairly, then it may as well be me.
>
> I say to all members of the local union and the creidt union, demand your right to vote and use it as you see fit to."

The amended complaint alleged that this article misrepresented the contents of plaintiff's October 2 letter by language that imputed inability to perform or want of integrity in the discharge of duties of the president of the credit union. It further alleged that subsequent to the publication of the article, the Attorney General's Office of the State of Illinois and the Department of Financial Institutions determined that the material contained in the article was without substance and totally false in that plaintiff had conducted himself properly in the

matter of the proxies and in the business affairs of the credit union. As a result of this publication, plaintiff contends that he was subjected to ridicule and harassment with the ultimate loss of his position as president of the credit union; that the credit union lost approximately $350,000 in withdrawals; and that he did not receive his usual merit salary increase as an employee of the Reynolds Metal Company. Malice was alleged to be the gist of the action.

Four issues are raised on appeal: (1) whether the language of the union newspaper article is libel per se; (2) whether plaintiff is a public official and therefore precluded from recovering without proof that defendant acted with actual malice or reckless disregard of the truth; (3) whether the article is libel per quod; and (4) whether the libel contains sufficient language to establish malice as the gist of the action.

Words may be actionable per se, as plaintiff contends, if they directly tend to prejudice or injure any person in his profession, trade or business and are used in relation to his occupation. (*Valentine v. North American Co. for Life and Health Insurance* (1973), 16 Ill. App. 3d 277, 280, 305 N.E.2d 746, *aff'd* 60 Ill. 2d 168, 328 N.E.2d 265.) However, the threshold question in this case is whether the article was defamatory. There is no general rule defining what words are defamatory and, therefore, each case depends upon its own facts. (*Wade v. Sterling Gazette Co.* (1965), 56 Ill. App. 2d 101, 106, 205 N.E.2d 44.) Whether a writing is libelous is a question of law to be determined by the court, and in making that determination, courts apply the "innocent construction" rule. (*von Solbrig Memorial Hospital v. Licata* (1973), 15 Ill. App. 3d 1025, 1031, 305 N.E.2d 252.) The innocent construction rule, as enunciated by our supreme court in

John v. Tribune Co. (1962), 24 Ill. 2d 437, 181 N.E.2d 105, "* * * holds that the article is to be read as a whole and the words given their natural and obvious meaning, and requires that the words allegedly libelous that are capable of being read innocently must be so read and declared nonactionable as a matter of law." (at page 442)

The first and second paragraphs of defendant's column complain of plaintiff's alleged insensitivity to steelworkers' problems, needs and desires. This language can be innocently construed to mean that communication between the union members and plaintiff was unsatisfactory and that plaintiff was unaware of certain grievances which were common among the membership. The statements, in context, do not impugn plaintiff's ability to perform or his integrity in the discharge of his duties so that the article would be libelous per se under the common law. Words may be characterized as extreme or bitter, and may hold up plaintiff to execration, but still may be found not libelous per se under Illinois law. (*von Solbrig Memorial Hospital v. Licata* (1973), 15 Ill. App. 3d 1025, 1031, 305 N.E.2d 252.) We hold that under the innocent construction rule, the words contained in the first part of the article were not libelous as a matter of law. (Accord, *Valentine v. North American Co. for Life and Health Insurance* (1974), 60 Ill. 2d 168, 328 N.E.2d 265; *Kaplan v. Greater Niles Township Publishing Corp.* (1971), 2 Ill. App. 3d 1090, 278 N.E.2d 437; *Wade v. Sterling Gazette Co.* (1965), 56 Ill. App. 2d 101, 205 N.E.2d 44.) The language contained in the headline and the latter part of the article referring to the withholding of proxies is also non-libelous under the innocent construction rule because these words may be construed as criticism of credit union policy rather than impugnment of plaintiff's business or professional reputation.

Furthermore, we believe that even if the language was actionable per se as an impeachment of plaintiff's business or professional reputation, plaintiff still could not recover under these circumstances. The United States Supreme Court in *New York Times Co. v. Sullivan* (1964), 376 U.S. 254, 11 L. Ed. 2d 686, 84 S. Ct. 710, held that damages could not be awarded to an public official in a suit for libel based upon defamatory criticism of his official conduct without proof that the defendant acted with actual malice or with reckless disregard of the truth. This rule represented an accommodation between the competing concerns of freedom of speech and the individual's right to be protected from and to redress defamatory attacks upon his reputation.

In *Curtis Publishing Co. v. Butts* (1967), 388 U.S. 130, 18 L. Ed. 2d 1094, 87 S. Ct. 1975, this conditional privilege to comment on public officials was extended to include "public figures" who are involved in issues which the public has a justified and important interest. A public figure may recover damages for defamation which substantially endangers his reputation only on a showing of highly unreasonable conduct constituting an extreme departure from ordinary journalistic standards.

However, in *Rosenbloom v. Metromedia* (1971), 403 U.S. 29, 29 L. Ed. 2d 296, 91 S. Ct. 1811, the Supreme Court stated that the first amendment's impact upon state libel laws derived not so much from whether the plaintiff was a "public official," "public figure," or "private individual," as it derived from the question of whether the allegedly defamatory publication concerns a matter of public or general interest. It was held that a libel action by a private individual for a defamatory falsehood relating to his involvement in an event of public or general concern may be sustained only upon

clear and convincing proof that the defamation was published with knowledge that it was false or with reckless disregard of whether it was false or not. The court stated at page 43 of its opinion:

> "The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect, and significance of the conduct, not the participant's prior anonymity or notoriety."

The issue was further clarified in *Gertz v. Robert Welch, Inc.* (1974), 418 U.S. 323, 41 L. Ed. 2d 789, 94 S. Ct. 2997, where the court classified public figures into two groups: those who occupy positions of such persuasive power and influence that they are deemed public figures for all purposes, and those who have thrust themselves to the forefront of certain controversies in order to influence the resolution of the issues involved, thereby inviting attention and comment. The court determined that "[i]t is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." (at page 352)

Our supreme court decided in *Farnsworth v. Tribune Co.* (1969), 43 Ill. 2d 286, 253 N.E.2d 408, that the scope of the public figure classification is not limited to utterances that might embrace the resolution of political or governmental questions, but rather encompasses discussion on matters of public interest. Accordingly, an osteopathic physician who was labeled a "quack" in a newspaper article was found to be a public figure because the publication concerned a matter of vital importance; that is, the qualifications and practices of a person repesenting herself as qualified to treat human ills. The operator of a nursing home was found to be a public official in *Doctors Convalescent Center, Inc. v. East Shore Newspapers, Inc.* (1968), 104 Ill. App. 2d 271,

244 N.E.2d 373, by reason of the public interest in the institutionalization of the ill, infirm, and minor wards of the State. In *Basarich v. Rodeghero* (1974), 24 Ill. App. 3d 889, 321 N.E.2d 739, teachers and athletic coaches in a community high school were found to be "public officials" or "public figures" because of, *inter alia*, their highly responsible positions in the community and public concern with their conduct and policies.

We believe that the *New York Times* privilege for defamation of public officials and its extension to public figures is applicable to the case at bar. Looking to the nature and extent of plaintiff's participation in the controversy giving rise to the alleged defamation, it is apparent that plaintiff thrust himself into the forefront of the action by virtue of being elected president of the credit union. In so doing, he invited attention and comment on his official conduct and policies. While he cannot be deemed a public figure for all purposes, it is clear that in this context plaintiff may not use the protection afforded a private individual to insulate himself from such comment. This, together with the fact that the article was published in a union newspaper by a member of the credit union concerning a matter of general interest to the membership, is sufficient to bring the cause under the conditional privilege.

The primacy of our holding that no libel has been shown is dispositive of the remaining issues concerning whether libel per quod existed, or whether the language was sufficient to establish malice as the gist of the action.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

AFFIRMED.

DIERINGER and BURMAN, JJ., concur.

APPENDIX B

49120

STATE OF ILLINOIS
OFFICE OF
CLERK OF THE SUPREME COURT
SPRINGFIELD
62706

CLELL L. WOODS
CLERK

March 31, 1977

TELEPHONE
AREA CODE 217
782 2035

Mr. Stanley H. Jakala
Attorney at Law
3219 Maple Avenue
Berwyn, Ill. 60402

No. 49120 - William C. Korbar, petitioner, vs. Thomas Hite, et al., respondents. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clell L. Woods

Clerk of the Supreme Court

APPENDIX C

Reynolds McCook Employees Credit Union P.O. BOX 239 | BROOKFIELD, ILLINOIS 60513
• 485-6803
• 485-6688

October 2, 1974

Mr. Thomas Hite, President
United Steelworkers of America
Local 3911
5722 West 63rd Street
Chicago, Illinois 60638

Dear Mr. Hite:

I am writing this letter to answer your letter dated September 13, 1974 regarding the refusal of issuance of permanent proxies to members of Reynolds McCook Employees Credit Union.

No member of the Credit Union, and I repeat, no member, has ever been refused his permanent proxy if he or she has so requested. Although it is highly irregular to issue this proxy upon request, we are so doing.

As to your threatening this person, I should remind you as to the name of this organization. It is Reynolds McCook Employees Credit Union, serving all of Reynolds Metals, not just a select few who you represent concerning local union business only. I will treat everyone with the same regard of courtesy and I will act as their embassary. I do not need any help from any member of the local unions. I should hope the local unions handle their own affairs and leave me free to handle mine.

In regard to your second letter requesting a meeting, I am under the impression that only a select few attended this particular meeting. I have no knowledge as to the purpose or reason for that meeting. I remind you there are 3200 members in this organization, and the select few that attended your meeting does not come near the majority of participation.

Each member account federally insured to $20,000.00 by Administrator, National Credit Union Administration

Therefore, I feel it my perogative to disregard your invitation.

Repeating myself again, I was selected for this position, I believe for the betterment of this organization and to try to make it a better place to save. I am proud to be a director of this organization and am doubly proud of the building which I know I have been a large part in acquiring. I give my time freely, which is my big concern. I only wish more of the directors could feel the same way.

If there is any way I can help you, feel free to call upon me, as you are one of our members.

Fraternally,

William C. Korbar,
President

WK;gb
cc: Directors and Staff
of Reynolds Credit Union

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APPENDIX D

From The Desk Of The President

Is Your Credit Union Above Board?

By Tom Hite

The question, is your credit union serving you or is it headed by a president that is insensitive to your needs or desires? I think that these are some of the questions that you should be interested in getting an answer to before you think about putting the same Board of Directors back in at the next Annual Meeting. From what has been told to me, your credit union seems to be run by a president and a majority of the Board of Directors that think that they own it and anytime you seek service from them, they will be doing you a favor.

After receiving a mandate from you to discuss some of your grievances with Mr. Kobar in an effort to resolve them, I got in touch with Mr. Kobar and requested a meeting with him. In essence Mr. Kobar said that he could care less about the steelworkers problems and that he would do as he pleases. Perhaps, if Mr. Kobar had tried, I am sure that many of the grievances or misunderstandings could have been resolved or explained and all would have been satisfied. I am well aware that the Board of Directors makes policy governing the operation of the credit union, but common decency dictates that every man or woman be afforded proper dignity and respect due any human being.

I do think that the Spanish Speaking members should be treated with dignity. I do think the manager should not stand in the back of the office and transact business with a member where everyone can hear.

I do think that if you cannot help a member, that he or she should be called into an office and told why and that member should be councilled as to what would be the best alternative to the problem.

I do think that the credit union should give back your proxy if you want it and allow you the chance to exercise your democratic right to vote for the people of your choice.

I do hope that as a part of plant management, that Mr. Kobar does not reflect the sentiment of the company. I have never wanted to become anything in the credit union but a member and I have never experienced any of the indignities that I've been told other members experienced, but when one member of the steelworkers is treated unfairly, then it may as well be me.

I say to all members of the local union and the credit union, demand your right to vote and use it as you see fit to.

Supreme Court, U. S.
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THOMAS HITE, ALUMINUM WORKERS NEWS, AND LOCAL UNION 3911 UNITED STEELWORKERS OF AMERICA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondents oppose the issue of a writ of certiorari because of the lack of any federal question, substantial or insubstantial. We briefly respond, in corresponding order, to the three points raised in the Petition as alleged reasons for granting the writ.

I.

NO FEDERAL ISSUE IS RAISED BY THE APPLICATION OF THE INNOCENT CONSTRUCTION RULE.

Illinois follows the innocent construction rule. Applying that rule, the Illinois Appellate Court held that the words used in the subject publication were not libelous. (Pp. 4-5) This being a matter of pure state law, no federal question is involved.

II.

NO FEDERAL ISSUE IS RAISED BY THE APPLICATION OF THE PUBLIC FIGURE RULE.

We note initially that the Appellate Court decided the public figure issue as dictum only, having already held that the words in the publication were not libelous under state law. (P. 6) At any rate, the issue was adjudicated as a matter of state, not federal law.

In *Farnsworth* v. *Tribune Co.*, 43 Ill. 2d 286 (1969), the Illinois Supreme Court applied the *New York Times* qualified privilege to all matters of public interest or concern. In so doing, it imposed a limitation upon Illinois libel claims that would not become required under principles of federal law until two years later under *Rosenbloom* v. *Metromedia*, 403 U. S. 29 (1971). In *Farnsworth*, the public figure was an osteopathic physician. Using this approach, other Illinois decisions have applied the privilege with equal liberality. *Doctors Convalescent Center, Inc.* v. *East Shore Newspapers, Inc.*, 104 Ill. App. 2d 271 (1968) (nursing home operator); *Basarich* v. *Rodeghero*, 24 Ill. App. 3d 889 (1974) (high school teachers and athletic coaches). In the instant case, the *Farnsworth* doctrine was applied and the privilege was upheld with respect to the president of a credit unit.

Petitioner does not explain why a federal issue arises when a state court elects to expand a privilege in libel actions. For the State of Illinois could even eliminate libel as a cause of action within its jurisdiction and such would not be a matter of federal concern.

III.

NO FEDERAL ISSUE IS RAISED BY THE FAILURE TO FIND MALICE UNDER STATE LAW.

The Appellate Court held that, the words not being libelous under Illinois law, the holding was dispositive of the malice issue. No federal question is involved in this determination.

CONCLUSION.

New York Times and its progeny were intended to balance the right of free speech against the legitimate use of defamation laws in the states. As this Court stated in *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974):

> "We would not, of course, invalidate state law simply because we doubt its wisdom, but here we are attempting to reconcile state law with a competing interest grounded in the constitutional command of the First Amendment."

Minimum standards have been established by this Court to guarantee First Amendment protection. So long as that protection is provided, the states are left free to administer their laws. Quoting again from *Gertz*:

> ". . . we conclude that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual . . . We hold that, as long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual."

Petitioner apparently is contending that Illinois provides more First Amendment protection than is required by the decisions of this Court. He asserts that this constitutes a violation of the Freedom of Speech clause. The rationale of such an argument is difficult to grasp.

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